

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION

MDL NO. 1968

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THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER #4**

**I. Filing of Pretrial Order No. 4**

A copy of this order shall be filed in each 2-08-md-1968 related case transferred to, removed to, or filed in this district up to and including 2-08-cv-1261 and shall apply to all such cases. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to each plaintiff at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to each new party upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at [www.wvsd.uscourts.gov](http://www.wvsd.uscourts.gov).

**II. Initial Conference**

An initial pretrial conference was held on October 10, 2008 by Judges Joseph R. Goodwin and Mary E. Stanley. The court first met with Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) in chambers to discuss agenda items for the pretrial conference and



preliminary matters concerning plaintiffs' organizational structure. Present at the Liaison Counsel meeting were Fred Thompson, III and Harry Bell, Jr. for the plaintiffs and Rebecca Betts, Matt Moriarty and Kristin Mayer for the defendants. The courtroom conference that followed was transcribed by Lisa Cook, Official Court Reporter. Counsel may contact Lisa Cook at (304) 347-3198 to request a copy of the transcript. A list of those individuals present at the initial pretrial conference is attached. A summary of the initial pretrial conference follows.

**A. Coordination with State Digitek Cases**

The court advised counsel of its intention to coordinate heavily with the judges and counsel involved in the state Digitek cases, especially in West Virginia and New Jersey where a majority of the state cases have been filed.

**B. Plaintiffs' Steering Committee**

The court advised counsel of the time and energy that shall be required of counsel appointed to the Plaintiffs' Steering Committee (PSC). The court instructed counsel that the PSC will be a working group representative of a majority of the plaintiffs. The court is flexible on the number of appointees and will take under serious advisement any recommendations showing a consensus of the plaintiffs made by the Plaintiffs' Liaison Counsel.

**C. Acceptance of Service and Tolling Agreement**

Defense counsel agreed to meet with Plaintiffs' Liaison Counsel to discuss issues related to acceptance of service and applicability of a master tolling agreement to be used in MDL 1968.

**D. Preservation of Documents**

The court advised counsel that the preservation order in Pretrial Order #1 will remain in place until such time as it is revised by the court.

**E. Next Conference and Related Matters**

The court advised counsel that the date of the next conference would be decided after the Plaintiffs' Steering Committee is appointed. Matters delayed for development at that time will include: reducing the number of defendants, status of protocols for Digitek tablet inspections, a proposed stipulated protective order, a proposed process for exchange of Plaintiffs' and Defendants' fact sheets, a proposed timeline for amendment of pleadings and adding parties and a proposed timetable for considering class certification motions.

**F. Discovery**

Judge Stanley advised counsel of her general expectations during the discovery process.

**III. Organization of Counsel**

**A. Plaintiffs' Counsel**

**1. Lead and Liaison Counsel**

The following are hereby appointed as Co-Lead counsel for plaintiffs:

Carl N. Frankovitch, Esq.  
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Harry Bell Jr. shall continue his appointment as Liaison Counsel for the plaintiffs.

**2. Duties and Responsibilities of Plaintiffs' Co-Lead and Liaison Counsel**

**a. Lead Counsel**

The Plaintiffs' Co-Lead Counsel shall have the following responsibilities:

- (1) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions as long as the presentation does not unduly delay the proceedings.
- (2) Submit and argue any verbal or written motions presented to the court or magistrate judge on behalf of the plaintiffs as well as oppose, when necessary, any motions submitted by the defendant which involve matters within the sphere of the responsibilities of Lead Counsel.
- (3) Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

(4) Negotiate and enter into stipulations with defendant regarding this litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until the court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the court a written objection thereto within ten (10) days after service by liaison counsel of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

(5) Explore, develop and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.

(6) Perform such other functions as may be expressly authorized by further orders of this court

**b. Liaison Counsel**

The Plaintiffs' Liaison Counsel shall have the duties enumerated in Pretrial Order #1.

Plaintiffs' Lead and Liaison Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the court.

**3. Plaintiffs' Steering Committee**

Numerous applications/nominations for the Plaintiffs' Steering Committee (PSC) positions have been filed in accordance with the procedures set forth in Pretrial Order # 2. the court, after having reviewed the applications and carefully considering the matter, hereby appoints the following members to the PSC:

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Due the large nature of the PSC the court finds it necessary to appoint a PSC Chairperson to manage the responsibilities of the PSC in close coordination with Plaintiffs' Co-Lead Counsel. The court appoints Teresa Toriseva as Chairperson of the PSC. The PSC Chairperson's duties include the following: scheduling PSC meetings as requested by Co-Lead counsel and ensuring the performance of the duties of the PSC as directed by Co-Lead counsel, presiding over PSC meetings and keeping detailed notes and/or transcripts of such meetings, appearing at periodic court noticed status conferences, preparing periodic status reports summarizing the PSC's work and progress, performing other necessary administrative or logistical functions of the PSC as requested by Co-Lead counsel, and carrying out any other duties as the court may order.

The appointment of the PSC is of a personal nature. Accordingly, the above appointees cannot be substituted by other attorneys, including members of the appointee's law firm, to perform the PSC's exclusive functions, such as committee meetings and court appearances, except with prior approval of the court.

**4. Duties and Responsibilities of Plaintiffs' Steering Committee**

The Steering Committee will have the following responsibilities:

**a. Discovery.**



(1) Initiate, coordinate and conduct all pretrial discovery on behalf of all plaintiffs who file civil actions which are consolidated with the instant multidistrict litigation known as "MDL-1968, In re Digitek Products Liability Litigation."

(2) Develop and propose to the court schedules for the commencement, execution and completion of all discovery on behalf of all plaintiffs.

(3) Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests, notices and subpoenas may be caused to be issued by the Steering Committee upon written request by an individual attorney in order to assist that attorney in the preparation of the pretrial stages of the particular claims asserted by their clients.

(4) Conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs. With regard to depositions, only two members of the Steering Committee or counsel duly authorized by them may question each deponent, provided that the second questioner is not repetitious. No attorney for plaintiffs may be excluded from attending the examination of witnesses and other proceedings. Such attorney may suggest questions to be posed to deponents through the designated Steering Committee members provided that such questions are not repetitious.

**b. Miscellaneous.**

(1) Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or the court.

(2) Distribute copies of periodic status reports prepared by the

PSC Chairperson to all plaintiffs' attorneys. The reports shall be submitted by the PSC Chairperson to the Plaintiffs' Liaison Counsel who will promptly distribute copies. The periodic status and progress reports must be forwarded to all plaintiffs counsel at intervals of no more than sixty (60) days commencing from the date of this order, and more frequently in the event of significant matters appropriate for communication.

(3) Perform any tasks necessary and proper for the Steering Committee to accomplish its responsibilities as defined by the court's orders.

Reimbursement for costs and fees for services of the Steering Committee will be set at a time and in a manner established by the court after due notice to all counsel and after a hearing.

**B. Defendant's Counsel**

**1. Liaison Counsel**

Rebecca A. Betts shall continue her appointment as Liaison Counsel for defendants.

The Defendants' Liaison Counsel shall have the duties enumerated in Pretrial Order #3.

**2. Lead Counsel**

The following are hereby appointed as Co-Lead Counsel for defendants:

Richard A. Dean, Esq.  
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Matthew P. Moriarty  
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216-592-5009 Fax  
[matthew.moriarty@tuckerellis.com](mailto:matthew.moriarty@tuckerellis.com)

Co-Lead counsel for the defendant shall have the following responsibilities:

- a. To determine (after consultation with the defendant) and present (in brief, oral argument or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the defendant on all matters arising during these pretrial proceedings;
- b. To delegate the specific tasks in a manner to ensure pretrial preparation for the defendant is conducted effectively, efficiently and economically; and
- c. To perform such other duties as may be incidental to proper coordination of the defendant's pretrial activities or authorized by further order of the court.

#### **IV. Status Conferences**

##### **A. Dates**

Dates for monthly status conferences will be determined at the first meeting of the PSC, in coordination with Co-Lead Counsel for the defendants. These dates will not be changed except by unanimous consent of all parties and by leave of court. In the event that this court determines that a scheduled status conference is not needed, the court will cancel that conference and notify Liaison Counsel of the cancellation. Additional conferences may be ordered from time to time by the court.

##### **B. Participation**

Any attorney representing any party, or any party unrepresented by counsel, may

attend status conferences, but only Liaison, Co-Lead Counsel and PSC Chairperson, or such other counsel as the court may permit, may actively participate in the status conferences. The Steering Committee may actively participate in the status conferences to the extent determined by the PSC Chairperson or as directed by the court.

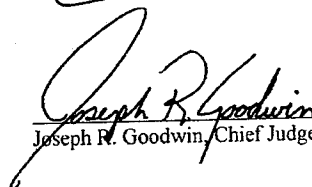
Status conferences may be held before Judge Goodwin, Judge Stanley, or both.

**V. Representation of Clients**

All attorneys representing parties to this litigation, regardless of their role in the management structure of the litigation and regardless of this court's designation of Lead and Liaison Counsel and a Plaintiffs' Steering Committee, continue to bear the responsibility to represent their individual client or clients.

The court **DIRECTS** the Clerk to file a copy of this order in each 2-08-md-1968 related case transferred to, removed to, or filed in this district up to and including 2-08-cv-1261 and it shall apply to all such cases.

ENTER: November 5, 2008

  
Joseph R. Goodwin, Chief Judge

Attendees at Initial Conference held October 10, 2008

Janet G. Abaray

Andres F. Alonso

Michael A. Anderson

K. Camp Bailey

Daniel E. Becnel, Jr.

Harry F. Bell, Jr.

Rebecca A. Betts

Robert Blanchard

John R. Climaco

Lauren M. DeLong

G. Rick DiGiorgio

Kimberley R. Fields

Carl N. Frankovitch

Stacy Hauer

Michelle Kranz

David Kuttles

Hirlye R. Lutz, III

Kristen L. Mayer

Richard D. Meadow

Karen Barth Menzies

Peter A. Miller

Matthew P. Moriarty

Ashley L. Ownby

Randall G. Phillips

G. Erick Rosemond

Shelly A. Sanford

Karren Schaeffer

Richard W. Schulte

Carmen Scott

J. Paul Sizemore

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David B. Thomas

Fred Thompson, III

Teresa C. Toriseva

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